

WEST VIRGINIA SECURITIES COMMISSION

STATEMENT OF POLICY

Preferred Stock

June 28, 2010

This Statement of Policy is adopted by the West Virginia Securities Commission pursuant to the authority of the Securities Commissioner of the State of West Virginia granted under Chapter 32 of the West Virginia Code. The West Virginia Securities Commissioner has determined that the following Statement of Policy relating to preferred stock is consistent with public investor protection and is in the public interest. The Commissioner may waive any requirement of this Statement of Policy for good cause, as he may determine.

I. APPLICATION

This statement of policy applies to all applications to register by coordination or by qualification.

II. DEFINITIONS

The terms used in this Statement of Policy are defined pursuant to the West Virginia Securities Commission Statement of Policy regarding Corporate Securities Definitions unless specifically stated otherwise within this Statement of Policy, or when the context clearly indicates otherwise.

III. GROUNDS FOR DENIAL OF SECURITIES REGISTRATION RELATING TO PAYMENT ABILITY

The Commissioner may deny the offer or sale of preferred stock based on the issuer's adjusted net earnings or a cash analysis. In either case, the issuer must have enough cash to pay the dividend, if any, on the preferred stock being offered whether or not declared.

- A.** The Commissioner may deny the offer and sale of preferred stock if either the issuer's adjusted net earnings

for its last fiscal year or the issuer's adjusted net earnings for its last three fiscal years were insufficient to pay the issuer's:

1. Fixed charges;
 2. Preferred stock dividends, whether or not accrued; and
 3. The redemption requirements, if any, of the preferred stock being offered to investors.
- B.** The Commissioner may deny the offer or sale of preferred stock unless the issuer's Statement of Cash Flows shows that "Net Cash Provided by Operating Activities" was positive for the issuer's last fiscal year. The Commissioner may require the issuer to submit a financial statement that is presented in conformity with generally accepted accounting principles and demonstrates that the issuer had an average positive "Net Cash Provided by Operating Activities" for the last three fiscal years.

IV. EXEMPTION FROM DENIAL OF SECURITIES REGISTRATION RELATING TO PAYMENT ABILITY

Section III shall not apply to public offerings of:

- A.** Convertible preferred stock that ranks ahead of any convertible debt relating to payment of dividends, interest, and liquidation proceeds; or
- B.** Preferred stock that is or may be legally or beneficially, directly or indirectly, owned by promoters.

V. GROUNDS FOR DENIAL OF SECURITIES REGISTRATION RELATING TO SHAREHOLDER APPROVAL

The Commissioner may deny the offer or sale of equity securities if the issuer's articles of incorporation authorize the board of directors to issue preferred stock without a vote by the common shareholders.

VI. EXEMPTION FROM DENIAL OF SECURITIES REGISTRATION RELATING TO SHAREHOLDER APPROVAL

Section V does not apply if:

- A.** The prospectus states that the issuer will not offer preferred stock to promoters except on the same terms as it is offered to all other existing or new shareholders; or
- B.** A majority of the issuer's independent directors that do not have an interest in the transaction:
 - 1.** Approve any offering of preferred stock; and
 - 2.** Have access, at the issuer's expense, to issuer's counsel or independent counsel.

VII. DISCLOSURE REQUIREMENTS

The issuer's prospectus relating to an offering of preferred stock shall disclose:

- A.** Whether dividends on the preferred stock are cumulative;
- B.** The risks of failure to declare or pay dividends on the preferred stock; and
- C.** The equity characteristics of any convertible preferred stock being offered to investors.

Glen B. Gainer, III
State Auditor
Commissioner of Securities

By: Lisa A. Hopkins
General Counsel
Senior Deputy Commissioner of Securities

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